

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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WENDELL DWAYNE O'NEAL,

Case No. 2:17-cv-03025-JAD-CWH

Plaintiff,

REPORT AND RECOMMENDATION

V.

TERRI ALBERTSON, et al.,

Defendants.

This matter is before the court on pro se plaintiff Wendell Dwayne O’Neal’s application to proceed *in forma pauperis* (ECF No. 1), filed on December 8, 2017. Also before the court is O’Neal’s motion for leave to file electronically (ECF No. 5), filed on January 5, 2018.

O’Neal was designated as a vexatious litigant in this district under 28 U.S.C. § 1651(a). See Order (ECF No. 173) in *O’Neal v. Empire Fire & Marine Insurance Company, Inc., et al.*, No. 2:16-cv-02313-JCM-CWH (D. Nev. Apr. 4, 2018). O’Neal was “enjoined and prohibited from filing any new complaint, petition, or other action in this court without first obtaining leave from the chief judge of this court.” *Id.* at 5. O’Neal’s *in forma pauperis* status also was revoked in that case because he paid the \$400.00 filing fee. See Order (ECF No. 36) in No. 2:16-cv-02313-JCM-CWH.

Although this case was commenced before O’Neal was declared a vexatious litigant, there is significant overlap between the allegations in this case and the allegations in *O’Neal v. Empire Fire & Marine Insurance Company, Inc.* It appears that the cases involve: many of the same parties; the same or similar claims; the same property, transaction, and events; and the same or similar questions of law. Given that O’Neal has been declared a vexatious litigant for his conduct in pursuing substantially similar claims to those at issue in this case, the court recommends that

1 O'Neal's application to proceed *in forma pauperis* and motion to file electronically be denied and
2 that his case be dismissed as frivolous under 28 U.S.C. § 1915(e)(2)(B).

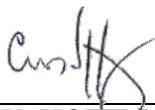
3 IT IS SO RECOMMENDED.

4 **NOTICE**

5 This report and recommendation is submitted to the United States district judge assigned
6 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
7 may file a written objection supported by points and authorities within fourteen days of being
8 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
9 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d
10 1153, 1157 (9th Cir. 1991).

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12 DATED: July 20, 2018

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14 C.W. HOFFMAN, JR.
15 UNITED STATES MAGISTRATE JUDGE
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